IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.930 OF 2003
IN
WRIT PETITION NO.236 OF 2000

Shri Jairaj N. Shetty
C/o. Madhya Railway Karmachari
Sangh, 33, Moti Bhawan,
Dr. D'Silva Road, Dadar,
Mumbai - 400 028 .. Appellant.

V/s.

The Union of India,
through The Divisional Railway
Manager, Central Railway,
CST, Mumbai .. Respondent.

Mr.Sandeep Marne for the appellant.

Mr.Suresh kumar for the respondent.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 21ST JUNE, 2005.

ORAL JUDGMENT (Per R.M. Lodha, J.)

Heard Mr.Sandeep Marne, the learned counsel for the appellant and Mr.Suresh Kumar, the learned counsel for the respondent.

2. The appellant (hereinafter to be referred as 'the workman') joined the service of the Central Railway (hereinafter to be referred as 'the railways') as Casual Cook in the Catering Section of the Commercial Department, Central Railway, Mumbai V.T. on April 21, 1988. The workman worked with the

railways for the period from 21.04.1988 to 30.06.1988, 07.08.1988 to 14.05.1989, 06.04.1990 to 30.06.1990, 02.05.1991 to 30.06.1991, 03.04.1993 to 30.04.1993, 16.05.1993 to 30.06.1993 and 07.04.1993 to 30.06.1994. The petitioner's services came to an end with effect from 01.07.1994. The dispute concerning the petitioner's termination was referred by the appropriate government to the Central Government Industrial Tribunal No.2. The Industrial Tribunal vide its award dated 09.04.1999 held that the termination of the workman was not legal and justified and directed the railways to reinstate the workman with continuity and pay him all backwages. The railways challenged the award of the Industrial Tribunal by filing writ petition. By an order dated 04.07.2003 the learned Single Judge allowed the writ petition filed by the railways and set aside the award dated 09.04.1999 passed by the Industrial Tribunal. Aggrieved by the order of the learned Single Judge the workman is in appeal before us.

3. The reason that prevailed with the learned Single Judge in setting aside the award was that the workman was not in continuous service in the year preceding the date of termination. The learned Single Judge held that it was necessary that the workman had completed 240 and 120 days of service

during the period of one year or six months as the case may be preceding the date of termination dated 01.07.1994. On consideration of the facts, the learned Single Judge held that the workman had neither completed 240 days in a year nor 120 days in six months preceding the date of termination i.e. 01.07.1994. In view thereof, the learned Single Judge held that there was no question of breach of Section 25F and he set aside the award passed by the Industrial Tribunal.

4. That the learned Single Judge was not right in construing the expression 'continuous service' to mean that the workman must have worked for 240 days or 120 days as the case may be in the year preceding the date of termination, the learned counsel for the appellant relied upon the judgment of the Supreme Court in the case of U.P. Drugs and Pharmaceuticals Co. Ltd. V/s. Ramanuj Yadav & Others [(2003) 8 SCC 334].

5. When the matter came up before the earlier bench on May 4, 2005, the Division Bench passed the order thus :

> ". We have heard this matter for some time. The judgment of the Supreme Court in U.P. Drugs and Pharmaceuticals Co. Ltd. vs. Ramanuj Yadav and ors. (2003) 8 SCC 334, was relied upon by the learned counsel

> for the workmen which prima facie supports his contention that it is not necessary to establish that the workmen has worked for 240 days during the period of 12 months preceding before the date of termination. Mr.Suresh Kumar, learned counsel appearing for the respondents states that he needs time to consider the judgment. Adjourned to 20.6.2005. Both parties agree that the appeal may be disposed of at the admission stage itself."

6. In U.P. Drugs & Pharmaceuticals Co. Ltd., the Supreme Court discussed Section 25B as existed originally and so also after amendment by the Industrial Disputes (Amendment) Act, 1964. In para 9, 10 and 11 of the report, it was held thus :

> "9. The amending Act of 1964 deleted Section 2 (eee), having incorporated in Section 25-B itself the definition of 'continuous service'. It also brought in the concept of preceding twelve calendar months. The earlier definition did not mention 'preceding' with reference to the period of twelve calendar months. It appears that the decision of this court in Sur Enamel and Stamping Works Ltd. v. Workmen interpreting Sections 2 (eee) and 25-B led to the amendments made by the amending Act of 1964. In Sur Enamel interpreting Sections 2 (eee) and 25-B, it was held that twin conditions were required to be fulfilled before a workman can be considered to have completed one year of continuous service in an industry. It must be shown first that the workman was employed for a period of not less than twelve calendar months and next that during those twelve calendar months, he had worked for not less than 240 days, In that case, the workman had not been employed for a period of twelve calendar months. Therefore, the Court held that it was unnecessary to examine whether actual days of work were 240 or more for in any case the requirements of Section 25-B would not be satisfied by the mere fact of number of working days being

not less than 240 days. The effect was that if a workman completes actual 240 or more days of work in less than twelve calendar months, he would not be entitled to the benefit of beneficial legislation. This anomaly led to the amendment of the ID Act in the manner abovestated.

10. Under the aforesaid legislative background, the question involved is required to be reconsidered, Section 2(g) of the U.P. Act does not require a workman, to avail the benefit of the deeming provision of completion of one year of continuous service in the industry, to have worked for 240 days during the 'preceding' period of twelve calendar months. The word 'preceding' has been used in Section 25-B of the ID Act as incorporated in the year 1964. Section 2(g) does not use the word 'preceding'. The concept of 'preceding' was introduced in the ID Act so as to give complete and meaningful benefit of the welfare legislation to the working class. The approach to be borne in mind while interpreting the welfare legislation is illustrated in Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court where this Court has observed that semantic luxuries are misplaced in the interpretation of 'bread-and-butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions.

11. The learned counsel for the appellant, however, relies upon Mohan Lal v. Bharat Electronics Ltd. In that case, the Court was considering the scope of Section 25-B of the ID Act. It was observed that in order to invoke the fiction enacted in clause (2)(a) of Section 25-B, it is necessary to determine first the relevant date i.e. the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of twelve months just preceding the date of retrenchment and then ascertain whether within a period of twelve months, the workman has rendered service for a period of

240 days. It was held that if these three factors are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in clause (2)(a), it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F. In Mohan Lal case the appellant was employed with the respondent from 8-12-1973. His services were abruptly terminated by a letter dated 12-10-1974 w.e.f. 19-10-1974. This Court said that it is not necessary for the purpose of clause (2)(a) of Section 25-B that a workman should be in service for a period of one year. It was held that if he is in service for a period of one year and that his service is continuous service within the meaning of sub-section (1), his services would be governed by sub-section (1) and his case need not be covered by sub-section (2). Sub-section (2) envisages the situation not governed by sub-section (1). Clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but has bas rendered service for a period of 240- days during the period of twelve calendar months counting backward and just preceding the relevant date i.e. the date of retrenchment. These were the facts under which it was held as to how the period of 240 days was to be calculated. The decision in the case of Mohan Lal does not lay does that if a workman had worked for more than 240 days in any number of years and if during the year of his termination, he had not worked for the said number of days, he would not be entitled to the benefit of Section 25-B. The question with which we are concerned was not under consideration in Mohan Lal case. If the viewpoint propounded by the management is accepted, then every year the workman would be required to complete more than 240 days. If in any one year the employer gives him actual work for less than 240 days, the service of the workman can be terminated without compliance with Section 6-N of the U.P. Act, despite his having worked for a number of years and for more than 240 days in each year except the last. Such an intention cannot be

> attributed to the U.P. Act. In the present case, as already noticed, the finding of the Labour Court is that the respondents worked for more than 240 days in each year from 1983 to 1986 but not having worked for 240 days in the year of termination, the termination was held by the Labour Court not to be violative of Section 6-N. Reference may also be made to the decision in Ramakrishna Ramnath v. Presiding Officer, Labour Court, Nagpur where this Court observed that the provision requiring an enquiry to be made to find out whether the workman has actually worked for not less than 240 days during a period of twelve calendar months immediately preceding the retrenchment does not show that a workman, after satisfying the test, has further to show that he has worked during all the period he has been in service of the employer for 240 days in the year. The interpretation propounded for the appellant is wholly untenable. The decision in U.P. State Coop. Land Development Bank Ltd. v. Tax Mulk Ansari relied upon by the learned counsel for the appellant has no applicability since that was a case of clause (a) of Section 6-N and, therefore, Section 2(g) had no relevance."

7. Mr.Suresh Kumar, the learned counsel for the railways could not dispute that in view of the judgment of the Supreme court in the case of U.P. Drugs and Pharmaceuticals Co. Ltd., the view of the learned Single Judge could hardly be supported. He fairly stated that in the light of the judgment cited supra, the legal position is crystalised that under Section 25-B of the Industrial Disputes Act, if a workman has worked for more than 240 days in earlier years, or any one of the earlier years, he would be deemed to be in continuous service. In our view this is correct reading of U.P. Drugs & Pharmaceuticals

Co.Ltd. and in view thereof the judgment of the learned Single Judge has to be set aside.

8. We were informed by the learned counsel for the workman that for the period from 01.07.1994 upto 09.04.1999, the railways have deposited 50% of backwages vide order dated 07.02.2000. We are of the view that workman must be permitted to withdraw the said amount. For the remaining 50% amount of backwages for the period from 01.07.1994 to 09.04.1999, the learned counsel for the workman made the statement that workman would not claim that amount.

9. In the result, the appeal is allowed. The judgment of the learned Single Judge passed on 04.07.2003 is set aside. The award of the Industrial Tribunal dated 09.04.1999 is restored. It is clarified that the back wages for the period from 01.07.1994 to 09.04.1999 shall not be claimed by the workman as stated by his counsel before us. The amount of backwages deposited by the railways in this Court for the period from 01.07.1994 to 09.04.1999 along with accrued interest is permitted to be withdrawn by the workman.

10. We record the statement of Mr.Suresh Kumar,

the learned counsel for the railways that within the period of six weeks the workman shall be reinstated and the due backwages shall also be paid within this time.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)